

DOCKET NO.: 211145US0



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

#7
5-16-03

IN RE APPLICATION OF :
HIROAKI ITAGAKI, ET AL. : EXAMINER: WEINER, LAURA S.
SERIAL NO: 09/903,750 :
FILED: JULY 13, 2001 : GROUP ART UNIT: 1745
FOR: NON-AQUEOUS ELECTROLYTIC :
SOLUTION AND SECONDARY
BATTERY CONTAINING SAME

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RESPONSE TO REQUIREMENT FOR RESTRICTION

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Official Action of April 9, 2003, Applicants provisionally elect, with traverse, the species of 2,6-di-tert-butyl-4-methylpyridine. Claims 1-20 read on the elected species, and Claims 1-8 and 10-20 are generic.

REMARKS

Applicants provisionally elect, for search and examination purposes only, 2,6-di-tert-butyl-4-methylpyridine.

Restriction is proper only if the inventions of the restricted groups are either independent or patentably distinct, and there is a burden in searching the entire application. M.P.E.P. § 803. Applicants respectfully traverse the Requirement for Restriction on the grounds that the Office has not provided any reasons, whatsoever, to support a conclusion of patentable distinctness. Rather, the Office has merely concluded that the claims are directed to "patentably distinct species" of a pyridine compound.

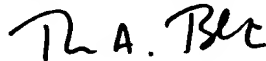
Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. M.P.E.P. § 808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the Requirement for Restriction is improper, and it should be withdrawn.

With respect to the elected species, Applicants respectfully submit that should the elected specie be found allowable, the Office should expand its search to the non-elected species. Finally, Applicants respectfully submit that the Office has not shown that a serious burden exists in searching all of the claims.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
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ATTORNEYS AT LAW

RE: Application Serial No.: 09/903,750
Applicants: Hiroaki ITAGAKI, et al.
Filing Date: July 13, 2001
For: NON-AQUEOUS ELECTROLYTIC SOLUTION AND
SECONDARY BATTERY CONTAINING SAME
Group Art Unit: 1745
Examiner: Weiner, L. S.

SIR:

Attached hereto for filing are the following papers:

Response to Requirement for Restriction (2 pp.)

Our check in the amount of \$0.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
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